

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

THERESA KLEBBA,

Respondent

v.

BRENDA UMSTATTD, COLE COUNTY CIRCUIT CLERK.

Appellant

DOCKET NUMBER WD74882

DATE: December 11, 2012

Appeal From:

Circuit Court of Cole County, MO
The Honorable Robert D. Schollmeyer, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Mark D. Pfeiffer, J., and Christine Carpenter, Sp. J.

Attorneys:

Mary Waddell Callahan, Jefferson City, MO

Counsel for Appellant,

Attorneys:

Emily Fretwell, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**THERESA KLEBBA, Respondent, v. BRENDA UMSTATTD,
COLE COUNTY CIRCUIT CLERK, Appellant**

WD74882

Cole County

Before Division Four Judges: Welsh, C.J., Pfeiffer, J., and Carpenter, Sp. J.

Brenda Umstattd, Cole County Circuit Clerk, appeals the circuit court's order making absolute a writ of prohibition forbidding her September 26, 2011 termination of Theresa Klebba's employment. Umstattd asserts that the court erred when: (1) it issued and made absolute the writ of prohibition because Klebba failed to exhaust all administrative remedies prior to seeking the writ; (2) it found that collateral estoppel prohibited Umstattd from terminating Klebba on September 26, 2011, because the issue in Klebba's September termination was not identical to the issue in her July 1, 2011 termination; (3) it found that res judicata prohibited her from terminating Klebba on September 26, 2011, because the September termination did not arise out of the same act or transaction as the July termination, and; (4) it erred in the wording of the judgment by being overly broad.

AFFIRMED.

Division Four holds:

(1) The circuit court did not err in issuing, and making absolute, the writ of prohibition forbidding Umstattd's September 26, 2011 termination of Klebba's employment. Umstattd's allegations against Klebba in the second termination were encompassed by Umstattd's allegations in the first termination, and, therefore, Klebba exhausted her administrative remedies with regard to those allegations when she appealed the first termination and the committee found in her favor.

(2) As the judgment is affirmed on other grounds, it is unnecessary to determine whether collateral estoppel prohibited Umstattd from terminating Klebba on September 26, 2011.

(3) As the judgment is affirmed on other grounds, it is unnecessary to determine whether res judicata prohibited Umstattd from terminating Klebba on September 26, 2011.

Opinion by James Edward Welsh, Chief Judge

December 11, 2012

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